



NATIONAL ASSOCIATION OF THE DEAF

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May 30, 1996

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Mr. William F. Caton
Office of the Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, D.C. 20554

Re: Reply Comments in the Matter of
Implementation of the Local Competition
Provisions in the Telecommunications
Act, CC Docket No. 96-98

Dear Mr. Caton:

Enclosed please find the original and sixteen copies of Reply Comments of the National Association of the Deaf in the above-referenced proceeding.

I would appreciate your referring all correspondence regarding this matter to my attention.

Sincerely,

Karen Peltz Strauss
Legal Counsel for
Telecommunications Policy

Enclosures

cc: International Transcription Service
Janice Myles (on diskette)

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MAY 30 1996

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)	
)	
Implementation of the Local)	CC Docket No. 96-98
Competition Provisions in the)	
Telecommunications Act of 1996)	

Reply Comments of the National Association of the Deaf

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May 30, 1996

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SUMMARY

The National Association of the Deaf supports the Commission's proposal to develop explicit national rules that would rapidly foster competition within local telecommunications markets. The monopolistic environment that has dominated the local loop has ignored the needs of individuals with disabilities in the past. In the interest of attracting new subscribers and broadening their markets, it is hopeful that new competitors will offer network features and capabilities that are attractive to the disabled community.

The Commission should act swiftly to promulgate regulations that establish minimum accessibility requirements for network services pursuant to its obligations under Sections 251, 255, and 256 of the 1996 Act. These standards should become part of the required terms and conditions which set the stage for the negotiations, arbitrations, and reviews required to promote local competition under Section 252 of the Act. In this manner, the Commission's accessibility standards must provide a floor for any and all interconnection agreements. As these standards are updated periodically, carriers and state commissions must be alerted, through regulatory proceedings and notices, as well as federal and trade publications, that their network functions must meet the updated standards.

Where a carrier has purchased access to a network element, all of the services provided by that carrier which use such element must be accessible to individuals with disabilities under the requirements of Sections 251, 255, and 256. Finally, because Section 251 applies to "each telecommunications carrier," the Commission's requirements for access must be equally applicable to incumbent and non-incumbent local exchange carriers, as well as to providers of commercial mobile radio services.

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FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554
CC Docket No. 96-98

**REPLY COMMENTS OF
THE NATIONAL ASSOCIATION OF THE DEAF**

I. Introduction

The National Association of the Deaf (NAD) hereby submits reply comments to the Federal Communications Commission's (FCC's) Notice of Proposed Rulemaking in the above captioned proceeding. The NAD is the nation's largest organization safeguarding the accessibility and civil rights of 28 million deaf and hard of hearing Americans in education, employment, health care, and telecommunications. The NAD is a private, non-profit federation of 51 state association affiliates including the District of Columbia, organizational affiliates, and direct members. The NAD seeks to assure a comprehensive, coordinated system of services that is accessible to Americans who are deaf and hard of hearing, enabling them to achieve their maximum potential through increased independence, productivity, and integration.

II. The Commission Should Adopt National Rules to Expedite Competition in Local Telecommunications Markets

The Commission has requested comment on the extent to which its rules should facilitate opening local markets to competition among telecommunications carriers. Specifically, the Commission has suggested that it adopt explicit rules that would ensure the successful

development of competition, yet which would preserve discretion for the states to resolve remaining issues that would not undermine such competition. NPRM at ¶¶27-29. We support such an approach.

The monopolistic environment that continues to dominate the local loop has, for the most part, ignored the needs of individuals with disabilities. With respect to persons with hearing disabilities, this has meant continued exclusion from various telecommunications services, notwithstanding the development and implementation of the nationwide telecommunications relay system. A few examples will illustrate this point:

1. Local exchange carriers have offered voice mail to their subscribers for a number of years. It cannot be disputed that a significant number of individuals and businesses throughout the United States have become dependent on voice mail service to run their daily operations. However, despite repeated requests for access to this service via text telephones (TTYs), voice mail remains largely inaccessible and unavailable to TTY users.

2. Call waiting has provided persons throughout the United States with the comfort of knowing that they need not miss an important call even if they are using their telephone. Indeed, this service has become commonplace for families who wish to leave open a telephone line to receive urgent calls from their children. Call waiting is not available in a textual format, however. Consequently, individuals who are deaf or severely hard of hearing cannot use this service, or must subscribe to a second telephone line, in order to have the same assurances that call waiting offers.

3. As noted by the Illinois Commerce Commission (ICC), in its original comments to this

proceeding, intercept message announcements, such as those that alert a caller that a number has been changed, are usually not accessible to TTY users. ICC Comments at 82-3. Although this TTY service is technologically feasible and has, in fact, been implemented in at least one region in the United States, typically TTY users have little or no access to voice recordings which alert callers that a number has been disconnected or that a new number is provided.

Competition among local telecommunications carriers will hopefully change the above scenarios. Presently, access to telecommunications services for people with disabilities has been on a piecemeal basis. To date, there has been little incentive for local carriers to try to broaden their markets to individuals with disabilities, or to create the seamless network of telecommunications services that is available to the general population. However, new competitors will have inducements to offer network features and capabilities that are attractive to the disabled community, as one of the many ways in which they can acquire subscribers to their services. In addition to offering accessible services which are otherwise provided to the general population - such as voice mail and call waiting - such entrepreneurs may even go further, to explore ways in which to enhance telecommunications services specifically for individuals with disabilities. One such example, would be the provision of a network service that would automatically route calls from a voice party to a TTY number through a relay service. Although this may not be feasible at the present time, digital technologies may one day make this possible, and further facilitate the manner in which voice callers can contact TTY users. A service like this may be available more rapidly if national rules are implemented to facilitate increased competition within local telecommunications markets. Indeed, the more such accessible services are

incorporated into the network, the less there will be a need to subsidize the costs of providing access to individuals with disabilities through external funding mechanisms such as universal service.

Small entrepreneurs are also more likely to incorporate access features into their network designs if there are markets open to them throughout the nation. As the FCC points out, a failure to adopt explicit national rules will enable states to establish varied priorities and timetables for requiring incumbent carriers to offer interconnection. NPRM at ¶33. This may very well discourage small entrepreneurs who wish to provide accessible services, but who cannot afford to offer their services to a limited number of communities.

III. CMRS are Telecommunications Carriers Covered by Section 251

The Commission seeks comment on the types of entities that qualify as a "telecommunications carrier" under section 251. NPRM at ¶245. On this matter, the FCC suggests that "to the extent a carrier is engaged in providing for a fee local, interexchange, or international basic services, directly to the public or to such classes of users as to be effectively available directly to the public, that carrier falls within the definition of "telecommunications carrier. . ." *Id.* We agree with this definition, and further agree with the Commission that providers of commercial mobile radio services (CMRS), including providers of PCS and other wireless services, are "telecommunications carriers" within Section 3(49) of the 1996 Act because they are "provider[s] of telecommunications services." As the Commission notes, these providers offer services "for a fee directly to the public," NPRM at ¶168, and accordingly, must comply, along with other "telecommunications carriers," with the requirements of Section 251, including

those which require accessible network features, functions and capabilities.¹

IV. The Commission Must Ensure that Requirements for Accessible Network Features, Functions and Capabilities are Incorporated into Interconnection Agreements

Section 251(a)(2) of the Telecommunications Act of 1996 requires telecommunications carriers to install "network features, functions, or capabilities" that comply with accessibility guidelines required by Section 255 of the Act. Section 255, in turn, requires providers of telecommunications services to ensure that their equipment and services are accessible and usable by individuals with disabilities. Finally, Section 256 of the Act authorizes the Commission to "participate in the development of network interconnectivity standards 'that promote access to . . . network capabilities and services by individuals with disabilities.' NPRM at ¶248 n.342, citing 1996 Act, sec. 101, §256(b)(2)(B). The FCC has requested comment on the steps needed to make carriers aware of these standards, and of periodic revisions to these standards. NPRM at ¶249.

Section 251 sets up various mechanisms by which incumbent local exchange carriers can arrive at a binding contractual obligation to make interconnection, services, and unbundled network elements available to new entrants and existing competitors in local telecommunications markets. These mechanisms are set out in Section 252 of the Act, and summarized in the Commission's NPRM at ¶16. They may include negotiation, arbitration, state commission

¹ We also agree with the Illinois Commerce Commission that to the extent that CMRS providers are providing services which substitute for landline or other local exchange services, they should be subject to the same legal requirements that are imposed on LECs, to avoid an unfair competitive advantage. The same should hold true for mobile satellite services. See ICC Comments at 63.

approval of arbitrated agreements, the FCC's review of arbitrated agreements if a state fails to act, and judicial review. In order to ensure that carriers are aware of the access requirements of Sections 255 as they move through these various processes and forums, the Commission must act promptly to establish the minimum accessibility standards required by Section 256. Without clear direction on how to implement the requirements for accessibility, these requirements are more than likely to be overlooked during these alternative stages of arriving at a binding agreement.²

Accordingly, the Commission's accessibility standards must become part of the required terms and conditions which set the stage for the negotiations, arbitrations, and reviews required by Section 252. It is incumbent upon the FCC to make clear, from the outset, that the accessibility standards cannot be a condition which an incumbent LEC and a new entrant can negotiate out of their binding contract. Rather they must be part of "the 'de facto' floor or set of minimum standards that guide the parties in the voluntary negotiation process," NPRM at ¶20, and which guide state commissions in resolving, by arbitration, issues among the parties. Indeed, Section 252(c)(1) explicitly requires state commissions to ensure that the resolution of any open issues meet the requirements of section 251, which will include the Commission's regulations on accessibility implementing that section. Similarly, where an interconnection agreement comes before a state commission or the FCC for review, approval of that agreement must necessarily be contingent upon compliance with the Commission's accessibility standards. Insofar as Section 251 prohibits telecommunications carriers from installing network features, functions, or

² In promulgating such standards, the Commission should make clear that such standards are minimums only, and that the states may develop more comprehensive and stringent accessibility guidelines.

capabilities that do not comply with the accessibility guidelines and standards of Section 255 and 256, state commissions or the FCC will be well within their authority to reject arbitration agreements that do not conform to these accessibility requirements. This is in accordance with Section 252(e)(2)(B), which explicitly provides that a state commission may reject an arbitrated agreement if the agreement fails to meet the requirements of Section 251. See NPRM at ¶19.

In the above manner, the minimum accessibility standards promulgated by the Commission will be incorporated into any and all interconnection agreements. As these standards are updated periodically, carriers must be alerted, through regulatory proceedings and notices, as well as federal and trade publications, that their negotiations and agreements must reflect the updated standards.

The Commission also requests comments on how the phrase "network features, functions or capabilities" should be defined and what is meant by "installing such network features," in establishing obligations to ensure access under Sections 251, 255 and 256. On these matters, we fully support the comments submitted by the American Foundation of the Blind (AFB). As AFB has stated, in order to fully achieve the Congressional objective of ensuring access to network services, these phrases must be interpreted broadly to include not only the services deployed within the network itself (AFB offers the example of speech-to-text or text-to-speech), but the manner in which a facility or equipment may affect access to those services.

In its NPRM, the Commission refers to the Joint Explanatory Statement's explanation of a "network element" as "the facilities, such as local loops, equipment, such as switching, and the features, functions, and capabilities that a [LEC] must provide . . ." NPRM at ¶83. The

Commission then goes on to ask for comment on the distinction between the facility or equipment used to provide a telecommunications service and the service itself, and asks whether "the purchase of access to [a network] element entitle[s] or indeed obligate[s] the requesting carrier to provide the customer with all services, intrastate and interstate, that use the element." NPRM at ¶84.

Where a carrier has purchased access to a network element, all of the services provided by that carrier which use that element (i.e. facility or equipment) must be accessible to individuals with disabilities under the requirements of Section 251, 255, and 256.³ An example will help to illustrate this point. Currently, wireless services hook up to local telecommunications networks - i.e. use local switching - in order to provide telecommunications services. Yet transmission problems between digital wireless services and TTYs currently prevent the use of these services by TTY users. Under the definition of network element, there can be no question that such wireless services constitute a network "feature, function, or capability" that must be made accessible under the above statutory provisions. FCC standards need to be established which would ensure this result.

Finally, the Commission requests comment on how the accessibility requirements of Section 251(a)(2) should be applied to incumbent versus non-incumbent LECs. The 1996 Act does not draw any distinction between the two, but rather applies the accessibility requirements to

³ Thus, we support AFB's position that "installation" of a network feature must be given a broad meaning in that "[a]ny service deployed by a telecommunications carrier, or by a provider connecting to a telecommunications network and intended for use by the public or classes of the public should be considered an installation of 'features, functions or capabilities.'" AFB Comments at ¶2.

"each telecommunications carrier," regardless of their incumbency status.

As the Commission noted in its NPRM, other proceedings will take place to establish the standards for accessible network services required by the sections discussed above. For this reason, we do not comment, at this time, on all of the specific network features that need to be accessible. We do wish to note, however, the need to make accessible the services discussed in Section II above - voice mail, call waiting, and intercept message announcements, and wish to state our support for the suggestions proposed by the Illinois Commerce Commission to ensure access via TTYs to directory assistance, telephone repair assistance, and operator services⁴. ICC Comments at 83.

V. Customer Notification and Education Must be Provided in Accessible Formats

The Commission seeks comment on whether carriers should be subject to consumer education requirements, including requirements to notify customers about how they may select a new carrier. NPRM at ¶213. We agree that such requirements will be important, to alert consumers about the availability of new competitors in their areas. To the extent that consumer education guidelines are developed, we urge the inclusion of a requirement that educational materials and media be provided in accessible formats. For example, should public service announcements or paid commercial advertisements be aired on television, requirements for closed

⁴ Indeed, as the FCC explains, LECs are required to ensure nondiscriminatory access to operator services, directory assistance, and directory listings so that telephone customers can access these services in the same manner - e.g. by dialing "O" or "411" - regardless of their chosen local telecommunications provider. Yet, TTY users have never even been able to directly access these services from their existing local exchange carrier.

captioning and video description of such announcements should be in place. Similarly, if consumer forums are conducted (e.g. by state agencies, their designates, or telecommunications carriers) to educate customers about new providers and services, these forums should provide whatever auxiliary aids (e.g. sign language interpreters, assistive listening systems) that are necessary to provide effective communication to deaf and hard of hearing audiences. Any written materials should be available in alternative formats, such as through electronic mail, and in braille and large print formats. Finally, 800 numbers provided by state commissions or telecommunications carriers for the above educational purposes should have TTY options, which are prominently displayed wherever those 800 numbers are advertised.


VI. Conclusion

It is imperative that the Commission act swiftly to promulgate standards that require telecommunications carriers to install network features, functions, and capabilities that are accessible to individuals with disabilities. Competition within local telecommunications markets has already begun and will continue to expand at a rapid pace given the passage of the 1996 Act. We support the development of national rules that will further encourage such competition, but emphasize the importance of ensuring that access requirements help to set the stage for the interconnection agreements which will guide this competition. We appreciate the opportunity to submit these comments and stand ready to assist the Commission in crafting rules that will ensure

National Association of the Deaf
May 30, 1996

access to network services for all Americans.

Respectfully submitted,

A handwritten signature in cursive script that reads "Karen Peltz Strauss".

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